

UGANDA / JUDGMENT

Muganzi v Nantaba (Miscellaneous Cause No. 21 of 2013) [2013] UGHCLD 41 (26 April 2013) [2013] UGHCLD 41

COURT

HC: Land Division (Uganda)

BEFORE

Murangira, J

CASE / FILE NUMBER

Miscellaneous Cause No. 21 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 21 OF 2013

IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW OF PROHIBITION

MUGANZI CHARLES :::::::::: APPLICANT

VERSUS

HON. NANTABA IDAH ERIOS –

STATE MINISTER ::::: RESPONDENT

FOR LANDS, HOUSING AND

URBAN DEVELOPMENT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant through his lawyers M/s Luzige, Lubega, Kavuma & Co. Advocates brought this application against the respondent under Rules 3, 5, 6, 8 of the Judicature (Judicial Review) Rules, S. I. No. 11 of 2009 and Section 36 of the Judicature Act Cap. 13. This application is supported by an affidavit sworn by the applicant on 10th April, 2013. The respondent never filed in Court an affidavit in reply. In essence, this application stands unchallenged.

This application is seeking the following orders:-

1. An order of prohibition prohibiting the respondent from entertaining or hearing matters in respect to land formally comprised in Block 392, plots 1 and 5 at Ssekiwunga which is before High court vide Civil suit No. 186 of 2011 and making orders affecting the status quo of the suit land.
2. General damages.
3. Costs of this application.
4. Any other reliefs deemed fit by this Court.

Further, this application is based on the following grounds, namely; that:-

1. The applicant bought land comprised in Busiro Block 392 formally forming part on plots 1 and 5 from the registered owner Thomas Tenyigwa.
2. After the said purchase, the applicant made various subdivisions which he sold to various people.
3. Sometime in 2011, a one Twala Carolina Anna Nagadya, Leolanta Ndagire and Namatimba Deezi started laying false claims on the suit land and even reported a case of fraud against the applicant at police vide CID HQTS LPPU GEF 1501/2011 which case was rejected by the police.
4. The above individuals also made attempts through RDC Samuel Mpimbaza Hashaka to have all land titles which were subdivided from plot 1 and 5 cancelled but the Commissioner land Registration rejected their application.
5. The applicant filed Civil Suit No. 186 of 2011 in the High Court of Uganda at Nakawa against Twala Carolina, Anna Nagadya, Leolanta Ndagire, Namatimba Deezi for a declaration on the ownership and they also filed a written statement of defence together with the counterclaim which case is pending hearing.
6. The applicant received a written communication from the respondent to attend a meeting on 2nd April, 2013 at 10:00am wherein she accused the applicant of land grabbing and threatened to force the Commissioner for Lands to cancel his titles and even continued her vow even in the meeting of 8th April, 2013 where she stated that she will order the said Twaha Carolina and group to occupy the suit land.
7. The applicant replied the said letter on the 27th March, 2013 showing how he acquired the land and how he compensated all the bibanja holders from 2001 to 2010 and how he sued the complainants in the High Court of Nakawa, Civil Suit No. 186 of 2011. But the 1st respondent turned a deaf ear and instead the respondent is going ahead to hear a matter which is before Courts of Law and that has threatened to resettle even those who were compensated voluntarily.

8. The respondent vows to continue hearing the case and said that the case before Court is not against her and that it is not Court which appointed her a Minister.
9. What Hon. Nantaba is doing is not in the scope of her employment (hearing a matter which is before Court) and her actions amount to an indirect contravention of the sub-judice rule.
10. It is in the interest of justice that this application be granted.

On the 16th April, 2013 when this application came up for hearing, the respondent was not present dispute having been served with this application. There was an affidavit of service on Court record. And in that regard, on application by Counsel for the applicant to be allowed to proceed *ex parte*, the Court allowed his application to proceed *ex parte*. Indeed this application proceeded *ex parte*.

The brief background of this matter as given by Counsel for the applicant is that the Applicant bought land formally comprised in Block 392, Plots 1 and 2 from Thomas Tenyigwa and thereafter subdivided it to create new Plots which he sold to various individuals and that happened way back in 2001 according to the Land Titles Annexure "A" to the Application.

It happened that one Twala Carolina, Anna Nagadya, Leolanta Ndagire and Namatimba Deezi started laying claims on the suit land and even opened criminal Charges against the Applicant at CID Headquarters which made a report absolving the Applicant; see Annexure "B" to this application.

The Applicant filed Civil Suit No. 186 of 2011 against the said Twala Carolina and 3 others for declaration of the Court on who is the true owner of the suit land. The said Twala Carolina and 3 others filed a defence and Counter Claim on 13th January, 2012 and now the case is pending disposal by the High Court; see Annexure "D" to this application.

It is further submitted by Counsel for the applicant that however, the said Twala Carolina in contempt of Court petitioned the Respondent to handle the same matter as a family of Late Mayanja who was the 1st registered owner of suit land and as a result, the Respondent wrote to the applicant a letter copies of which were given to RDC, DPC, DISO, LC111, LC1 and others; see Annexure "E" to this application. In the said letter, the Respondent directed that all activities on the suit land should stop until the committee visits to take action.

It is also the contention of Counsel for the applicant that a meeting was held between the Applicant, the Respondent and the complainants where the Respondent vowed to continue handling the case which is before Court on the ground that it is not against her and that it was not the Court which appointed her.

Counsel for the applicant frame one issue for determination by Court. The issue; Whether the conduct of the Respondent to handle the matter which is before Court is prejudicial to the applicant and to Civil Suit No. 168 of 2011.

I have perused the affidavit evidence in support of this application and indeed, the complaint before the Respondent is the same complaint which is pending disposal before the High Court of Uganda at Nakawa. The Respondent threatened to take action and even directed that all activities on the land should be stopped by Local Leaders. That was contained in her letter dated 21st March, 2013 Annexure “E”. For the benefit of all the parties in conflict over the suit land, allow me to reproduce the said letter of the Minister, which I hereby do herebelow:

“.....

.....

Mr. Charles Muganzi

Mr. Thomas Tenyigwa

Land At Sekiwunga, Kiryamuli, Wakiso, Ssisa & Namulanda- Block 392 Plot 1 and Block 392 plot 5

I have received a petition from the family of the late Mayanja who have reported a case of land grabbing and illegal evictions of the above land that belongs to their family. This is unlawful.

Please, stand warned against these inhumane, unacceptable and unlawful evictions of lawful and bonafide occupants including even those with registrable interests.

H. E. The President has appointed a team which will visit the same land in dispute at a date that will be communicated to take action accordingly. The local leaders should help maintain law and order and stop any activities on this land until the committee visits to take action.

Meanwhile, You are invited for a meeting in my office on 2nd April, 2013 at 10:00am.

Sgd

Nantaba Idah Erios (Hon.)

Minister of State For Lands, Housing and Urban Development (Lands)”

The decision or actions of the respondent vide her said letter are certainly prejudicial to the applicants. Such actions or decisions are unlawful, to say the least of the respondent. In the above letter, she warned the Applicant against evicting the family of Late Mayanja and implied that the suit land belongs to them.

It is the evidence and submissions of the applicant that in the meeting of 2nd April, 2013; she vowed to continue handling the case on the grounds that the case before Court is not against her and she was not appointed by the Court. That is contained in paragraph 9 of the Applicant’s Affidavit of Reply. These averments of the applicant were not challenged by the respondent. They are taken as truthful against her (the respondent). In the case of **Shelton Okabo vs Standard Chartered Bank (U) Ltd, Miscellaneous Application No. 51 of 1992** (High Court at Kampala 7/8/92) Okello, J. (as he then was) held that:

“Since the respondent/plaintiff nor his Counsel filed an affidavit in reply to the supporting affidavit filed by Counsel for the applicant, the statements of facts contained therein remained uncontroverted.”

The Applicant is most worried that the Respondent is likely to take decisions which are likely to change the Status quo of the suit land thereby prejudicing the applicant who is in possession and also affecting other subsequent buyers.

Section 36 of Judicature Act Cap.13 mandates the High Court to make an order of prohibition, prohibiting any proceedings or matter. Further, in the case of; ***Stream Aviation Vs. Civil Aviation Authority 2008 HCB at 157***

It was held that, **prohibition serves to prohibit the happening of some act or the taking of some decision which would be ultravires. Prohibition looks at the future as a prohibitive remedy which Court can grant judiciously.**

Therefore, in the instant case, I agree with Counsel for the applicant that the Respondent should be prohibited from handling the matter concerning the suit land for the fact that since the matter is the High Court of Uganda, at Nakawa. It is Minister, the respondent to usurp the mandate given to courts by the Constitution of the Republic of Uganda is certainly wrong and unconstitutional. I am afraid, her actions if not prohibited might cause more harm than good in the locality where the suit land is located. The parties to the dispute should avoid employing politics in their endeavor to resolve land disputes. That jurisdiction lies with the courts of Judicature. The respondent should let the High Court of Uganda at Nakawa hear and determine the case between the said parties. In the premises I hold that this application has merit. It ought to succeed.

Conclusion

In the result and for the reasons given hereinabove in this ruling and for the fact that this application stood unchallenged, this application is granted in the following orders; that:-

1. **An order of prohibition prohibiting the respondent from entertaining or hearing matters in respect to land formally comprised in Block 392, plots 1 and 5 at Ssekiwunga which is before High court of Uganda at Nakawa vide Civil suit No. 186 of 2011 and making orders affecting the status quo of the suit land is hereby granted.**
2. **This application is allowed without costs.**

Dated at Kampala this 26th day of April, 2013.

sgd

MURANGIRA JOSEPH

JUDGE

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